

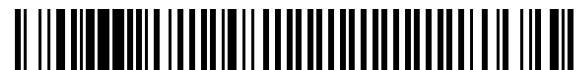
**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-[_____] (____)]
<i>et al.</i> ,)	
)	Joint Administration Requested
Debtors. ¹)	
)	

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS AUTHORIZING (I) DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF GAS VENDORS AND OTHER LIEN
CLAIMANTS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby file this *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) Debtors To Pay Certain Prepetition Claims of Gas Vendors and Other Lien Claimants and (ii) Financial Institutions to Honor and Process Related Checks and Transfers* (this “**Motion**”). This Motion is supported by the *Declaration of Michael B. Howe in Support of Debtors’ Chapter 11 Proceedings and First Day Pleadings* (the “**Howe Declaration**”) filed

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.



contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors seek entry of interim and final orders (the “**Proposed Orders**” and, if entered, the “**Orders**”) (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, all or a portion of the Lienholder Claims (as defined below) and (b) authorizing the Debtors’ financial institutions to receive, process, honor, and pay checks or wire transfers used by the Debtors to pay the foregoing.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012.

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

5. On April 1, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Cases.

7. Additional information about the Debtors’ businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the Howe Declaration, which is incorporated herein by reference.

Request for Authority To Pay Lienholder Claims

8. In operating their businesses, the Debtors use and make payments to (a) natural gas producers in Texas (collectively, the “**Gas Vendors**”) and (b) shippers, contractors, specialty suppliers, mechanics, laborers, and technical engineers (collectively, the “**Lien Claimants**”) that repair, maintain, equip, supply, transport, and otherwise service necessary equipment and machinery.²

9. As of the Petition Date, the Debtors estimate that they owe approximately \$23,000,000 to Gas Vendors and Lien Claimants for prepetition labor, shipping, delivery, and other charges (collectively, the “**Lienholder Claims**”).

Gas Vendors

10. The Debtors seek to pay prepetition charges of certain Gas Vendors. The Gas Vendors sell to the Debtors natural gas and natural gas liquids (“**NGLs**”) that they extract from

² To minimize the amount of payments required, the Debtors request authority to identify Gas Vendors and Lien Claimants in the ordinary course of their businesses. Publicly disclosing these vendors now would likely cause all such creditors to demand payment in full.

the ground in Texas. Certain of these Gas Vendors are also customers of the Debtors—*i.e.*, some of the upstream producers both sell to the Debtors natural gas and NGLs and contract for midstream services.

11. Applicable Texas state law and contractual agreements may afford the Gas Vendors a variety of remedies, including the right to assert liens on natural gas and NGLs in the Debtors' possession. The Gas Vendors' ability to assert liens on the Debtors' gas and NGLs would be severely disruptive to the Debtors' businesses as midstream services providers that purchase the vast majority of their gas and NGLs from producers in Texas.³ Additionally, if they are not paid, the Gas Vendors may refuse to continue doing business with the Debtors, resulting in significant additional expenses because the Debtors would have to locate replacement sources for natural gas and NGLs. Indeed, the Debtors may not be able to find replacement sources for natural gas and NGLs at the pricing provided by the Gas Vendors in the volumes required. The Debtors are party to numerous contracts to sell certain volumes of natural gas at various delivery points on their systems and, without their supply of natural gas and NGLs from the Gas Vendors, the Debtors may become operationally unbalanced. If purchases and sales are unbalanced, the Debtors face increased exposure to commodity price risks, which in turn could result in increased volatility in revenue, gross operating margin, and cash flows. Thus, the benefits of paying the Gas Vendors substantially outweigh any associated costs given the crucial roles that the Gas Vendors play in the ongoing viability of the Debtors' businesses.

³ The Debtors also purchase natural gas and NGLs from producers in Mississippi and Alabama, as well as vendors in the secondary marketplace. The Debtors are not seeking any relief in this Motion relating to such purchases, as they are addressed in the *Motion of Debtors for Entry of Interim and Final Orders Authorizing (i) Debtors To Pay Prepetition Trade Claims in the Ordinary Course of Business, (ii) Debtors To Pay § 503(b)(9) Claims to Certain Trade Creditors, and (iii) Financial Institutions To Honor and Process Related Checks and Transfers* filed contemporaneously herewith.

12. As of the Petition Date, the Debtors estimate that they owe approximately \$20,000,000 to the Gas Vendors.

Lien Claimants

13. The Debtors also seek authority to pay the prepetition charges of the Lien Claimants who, like the Gas Vendors, under applicable law have the potential to assert statutory liens against property of the Debtors if the Debtors fail to pay for goods provided or services rendered before the Petition Date. In order to ensure efficient operations and safe and orderly working conditions at their operating locations, the Debtors at times hire third party service providers or purchase goods to care for the pipeline and processing facilities. These services include, among others, (a) common carrier and freight transport, (b) engine, compressor, and turbine services, (c) pipeline construction, maintenance, and repair, (d) pump and valve repair, (e) instrument installation and repair, and (f) electrical construction services. If these costs are not paid, then there could be significant negative repercussions affecting the safety of the businesses. To assure regulatory compliance and protect the environment around their work sites, the Debtors contract with specialized vendors providing environmental services. Any disruption in the flow of the aforementioned services, parts, equipment, shipping, or supplies would immediately affect on-time delivery and production volume of products and byproducts. Further, any disruption in the flow of parts or services would cause the Debtors immediate and substantial economic harm and erode their ability to meet delivery obligations.

14. Much of the production equipment in use by the Debtors is highly customized and industry specific, and the available pool of experienced Lien Claimants is therefore limited, particularly in the Debtors' more remote pipeline sites. Furthermore, the technical knowledge of the Debtors' engineers and information technology suppliers is unique to the midstream natural gas industry and, in many cases, specially tailored to the Debtors' businesses.

15. Although equipment can in theory be obtained elsewhere, doing so economically and with new providers that are located far from the relevant sites represents a significant logistical and financial hurdle. The benefits of paying these equipment providers significantly outweigh the long term costs of failing to pay them for prepetition debts owed by the Debtors.

16. While the Debtors themselves employ on-site mechanics and engineers at many of their properties, the Debtors cannot afford to employ sufficient mechanics to repair and maintain all the specialized equipment the Debtors operate in all possible locations at which service might be required. Accordingly, in many cases, the Debtors have service agreements or longstanding business relationships with third party maintenance Lien Claimants and even individuals trained and licensed to provide maintenance services at various sites across southern Texas, Mississippi, and Alabama. The Debtors have, over the years, nurtured and developed their relationships with these Lien Claimants and have come to rely on the high-quality and priority service they receive. In addition, these Lien Claimants have developed in depth knowledge of the mechanical and engineering requirements of the plants and/or other equipment. It is essential to the continuity of the Debtors' operations, and the preservation of value of the Debtors' estates, that the Debtors maintain their relationships with these Lien Claimants. As of the Petition Date, the Debtors estimate that they owe approximately \$3,000,000 to Lien Claimants for non-natural gas related liabilities.

17. In sum, because the Debtors are dependent on many third party Gas Vendors and Lien Claimants, it is essential that the commencement of the Chapter 11 Cases not give any third party Gas Vendors or Lien Claimants reason or excuse to cease performing services or to retain products, equipment, or other goods.

Conditions to Payment of Prepetition Lienholder Claims

18. The Debtors seek the authority to pay those Lienholder Claims that they determine, in their sole discretion, are necessary or appropriate. The Debtors propose that they may, in their sole discretion, condition payment of any such Lienholder Claims upon an agreement to continue to supply goods or services to the Debtors on such creditor's "**Customary Trade Terms**"⁴ for the one-year period prior to the Petition Date and on other such terms and conditions as are acceptable to the Debtors. However, in certain circumstances, a Gas Vendor or Lien Claimant may refuse to provide services to the Debtors on the creditor's Customary Trade Terms even after payment of its claim. To accommodate these circumstances, the Debtors seek approval to enter into other agreements, in the Debtors' sole discretion, with each such Gas Vendor or Lien Claimant on a case-by-case basis.

19. To ensure that Gas Vendors and Lien Claimants transact business with the Debtors on Customary Trade Terms, the Debtors propose the following procedures, to be implemented in the Debtors' sole discretion, as a condition to paying any Gas Vendors or Lien Claimant: (a) a letter or contract including provisions substantially in the form of the letter attached hereto as Exhibit A (a "**Vendor Agreement**") be delivered to, and executed by, the creditor along with a copy of the order granting the relief sought herein and (b) payment of the creditor's Lienholder Claim include a communication of the following statement:

By accepting this payment, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the District of Delaware, dated _____, 2019 in the chapter 11 cases of Southcross Energy Partners, L.P., *et al.* (Case No.

⁴ As used herein, "**Customary Trade Terms**" means, with respect to a Gas Vendor or Lien Claimant, (a) the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable to the Debtors and in effect between such creditor and the Debtors in the one-year period prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such creditor.

19-___), entitled “Interim Order Authorizing (i) Debtors To Pay Certain Prepetition Claims of Gas Vendors and Other Lien Claimants and (ii) Financial Institutions To Honor and Process Related Checks and Transfers” and submits to the jurisdiction of that Court for enforcement thereof.

20. As a further condition of receiving payment on a Lienholder Claim, the Debtors also request authority to require, in their sole discretion, that a Gas Vendor or Lien Claimant agree to take whatever action is necessary to remove any existing Liens (as defined below) at such Gas Vendor’s or Lien Claimant’s sole cost and expense and waive any right to assert a Lien on account of the paid claim of such Gas Vendor or Lien Claimant.

21. The Debtors further propose that if a Gas Vendor or Lien Claimant accepts payment for a Lienholder Claim and, thereafter, refuses to continue to supply goods or services to the Debtors on the Customary Trade Terms for the applicable period, or on such terms as were individually agreed to between the Debtors and such creditor, then the Debtors may, in their sole discretion, and without further order of the Court (a) declare that the payment of such Lienholder Claim is a voidable post-petition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Gas Vendor or Lien Claimants in cash, and (b) demand that the creditor immediately return such payments in respect of its Lienholder Claim to the extent that the aggregate amount of such payments exceeds the post-petition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever. Upon recovery of such payment by the Debtors, such creditor’s Lienholder Claim shall be reinstated in such an amount as to restore the Debtors and the applicable Gas Vendor or Lien Claimant to their original positions, as if the agreement had never been entered into and the payment of the creditor’s Lienholder Claim had not been made. In sum, the Debtors will return the parties to their positions immediately prior to the entry of the order approving the relief sought herein.

22. To the extent that an agreement relating to a Lienholder Claim is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not, at this time, seek to assume such contract. Accordingly, if the Court authorizes the payments described above, such payments should not be deemed to constitute post-petition assumption, reaffirmation, or adoption of the programs, policies, or agreements as executory contracts pursuant to section 365 of the Bankruptcy Code, and the Debtors reserve all of their rights under the Bankruptcy Code in connection therewith. In addition, nothing in this Motion shall be an admission as to any lien or interest, including any possessory lien.

Basis for Relief

Failure To Pay Lienholder Claims Could Subject the Debtors' Assets to the Perfection of Statutory Liens

23. Many of the Gas Vendors and Lien Claimants who have provided prepetition goods and services to the Debtors may hold liens against the Debtors' property under applicable state producer's, mechanic's, repairman's, materialman's, and shipping lien statutes (the "**Liens**" and interests arising from the Liens, the "**Interests**"). With respect to the Gas Vendors, Texas state law creates automatically perfected liens in favor of oil and gas producers to secure payment for Texas-derived oil and gas sold to "first purchasers." Tex. Bus. & Comm. Code § 9.343 ("This section provides a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price The security interest provided by this section is perfected automatically without the filing of a financing statement."). Courts interpret the term "interest owner" broadly, subsuming the roles of the Gas Vendors. *See In re SemCrude, L.P.*, 407 B.R. 112, 126 (Bankr. D. Del. 2009).

24. Further, with respect to Lien Claimants, state laws in Texas, Alabama, and Mississippi operate to protect the rights of mineral contractors by granting them statutory liens to secure payment for their services. *See, e.g.*, Tex. Prop. Code Ann. § 56.002 (granting statutory liens to every mineral contractor or subcontractor to secure payment for labor or services related to the mineral activities); Ala. Code § 35-11-210 (general statute granting lien to “[e]very mechanic, person, firm, or corporation” that creates improvement or building on land); Miss. Code Ann. § 85-7-131 (“As to oil and gas wells, the operator thereof shall have such a lien upon the interest of each nonoperator owner of an interest in the mineral leaseholder.”).

25. Additionally, the Lien Claimants’ Liens and/or Interests may be perfected notwithstanding the automatic stay established by section 362(a) of the Bankruptcy Code. Although the Liens and Interests of the Lien Claimants may not be perfected presently, applicable state law generally provides that they may be perfected in the future, which perfection will relate back to the creation of the relevant Liens and Interests. Section 546(b) of the Bankruptcy Code explicitly respects such relation back, and section 362(b)(3) of the Bankruptcy Code exempts post-petition actions to perfect liens from the automatic stay otherwise established by section 362(a) of the Bankruptcy Code, so long as such perfection will relate back to before the petition date under the applicable law respected by section 546(b) of the Bankruptcy Code.⁵

26. Finally, approximately two-thirds of the potential Lienholder Claims are on account of goods delivered to the Debtors within 20 days before the Petition Date. As a result,

⁵ The Debtors reserve the right to contest the Liens and Interests and efforts to exercise associated remedies during the Chapter 11 Cases.

such Lien Claimants may also seek administrative expense status for such Lienholder Claims pursuant to section 503(b)(9) of the Bankruptcy Code.⁶

27. Therefore, to the extent that such Liens and/or Interests are perfected or entitled to administrative expense status, paying the Lienholder Claims will not reduce unsecured creditor recoveries in the Chapter 11 Cases. In instances where the amount owed to the Gas Vendors or Lien Claimant is less than the value of the property that could be held to secure a Lienholder Claim, such parties may be fully secured creditors of the Debtors' estates. In such instances, payment now only provides such parties with what they would be entitled to receive pursuant to a plan of reorganization, only without any interest costs that might otherwise accrue during the Chapter 11 Cases. Far from being harmed, the Debtors' unsecured creditors would benefit from the Debtors' smooth operation transition into chapter 11 bankruptcy.

28. Accordingly, the Debtors seek the authority to pay all or a portion of the Lienholder Claims as they determine, in their sole discretion, are necessary or appropriate to avoid disruption in operations and to support the ongoing viability of the Debtors.

Payment of Lienholder Claims Is Appropriate
Under Sections 363(b)(1), 363(c), and 105(a) of the Bankruptcy Code

29. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate."

11 U.S.C. § 363(b)(1). Debtors' decisions to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070

⁶ Section 503(b)(9) of the Bankruptcy Code provides that "[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including . . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9).

(2d Cir. 1983); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986) (implicitly adopting the “sound business purpose” test of *Lionel Corp.* and requiring good faith); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business purpose” test in the *Abbotts Dairies* decision); *see also In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Glob. Crossing Ltd.*, 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting the standard for determining a section 363(b) motion is “a good business reason”).

30. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, L.L.C. v. Selma Props. Inc. (In re Crystalin, L.L.C.)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis in original, internal alterations and quotations omitted)). Courts require only that the debtors “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. at 153 (citations omitted); *see also In re Phx. Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987); *In re Adelphia Commc’ns Corp.*, Case No. 02-41729, 2003 WL 22316543, at *31 (Bankr. S.D.N.Y. Mar. 4, 2003); *In re Lionel Corp.*, 722 F.2d at 1071.

31. Further, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616

(Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”); *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation’s affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re Def. Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *In re Food Barn Stores, Inc.*, 107 F.3d at 567 n.16 (citing *Richmond Leasing Co.*, 762 F.2d at 1309) (“Where the [debtor’s] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval ‘as long as the proposed action appears to enhance the debtor’s estate.’”).

32. Moreover, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to “enter into transactions . . . in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.”

11 U.S.C. § 363(c)(1).

33. One purpose of section 363 of the Bankruptcy Code is to provide a debtor with the flexibility to engage in the ordinary course transactions required to operate its business

without undue supervision by its creditors or the court. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (“Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate’s assets.”) (citations omitted); *In re Vision Metals, Inc.*, 325 B.R. 138, 145 (Bankr. D. Del. 2005) (same). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor’s ability to continue “routine transactions” necessitated by a debtor’s business practices. *See, e.g., In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (citations omitted) (noting that courts have shown a reluctance to interfere in a debtor’s making of routine, day-to-day business decisions); *In re Vision Metals*, 325 B.R. at 142 (“[W]hen a chapter 11 debtor in possession continues to operate its business, as permitted by section 1108, no court authorization is necessary for the debtor to enter transactions that fall within the ordinary course of its business.”).

34. The Bankruptcy Code does not define “ordinary course of business.” In determining whether a transaction qualifies as “ordinary course,” the Third Circuit has adopted the “horizontal” dimension test (*i.e.*, whether “from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry”) and “vertical” dimension test (*i.e.*, whether the transaction is consistent with the reasonable expectations of “hypothetical creditors”). *In re Roth Am., Inc.*, 975 F.2d at 953. “The touchstone of ‘ordinariness’ is . . . the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business.” *Id.* (citing *In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (S.D.N.Y. 1983)); *see also In re Nellson Nutraceutical, Inc.*, 369 B.R. at 797 (“[A] debtor’s pre-petition business practices and conduct is the primary focus of the vertical analysis.”); *Sportsman’s Warehouse, Inc. v. McGillis/Eckman Invs.-Billings, LLC (In re Sportsman’s*

Warehouse, Inc.), Case No. 09-10990 (CSS), 2013 WL 492554, at *9 (Bankr. D. Del. Feb. 7, 2013) (citation omitted) (“In determining whether a transaction is in the ordinary course of business, the Third Circuit has adopted the two-part horizontal and vertical dimension test.”); *In re Blitz U.S.A., Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (same).

35. The Debtors submit that, to the extent that the use of property of the estate is implicated here, the relief requested in this Motion represents a sound exercise of the Debtors’ business judgment, is within the Debtors’ ordinary course of business, is necessary to avoid immediate and irreparable harm, and is justified under section 363 of the Bankruptcy Code. Indeed, the relief sought herein is amply justified by the critical need for the continued receipt and/or distribution of goods and services from the Gas Vendors and Lien Claimants. The prompt payment of the Lienholder Claims, which may be necessary to obtain the delivery and/or provision of the goods and services of the Gas Vendors and Lien Claimants, is within the Debtors’ ordinary course of business and crucial for orderly and efficient operation of the Debtors’ businesses. Unless the Debtors have the authority to pay for these essential goods, their businesses will suffer irreparable harm.

36. In fact, courts in this and other jurisdictions have authorized similar relief to that requested herein. *See, e.g., In re TerraVia Holdings, Inc.*, Case No. 17-11655 (CCS) (Bankr. D. Del. Aug. 3, 2017); *In re CJ Holding Co.*, Case No. 16-33590 (DRJ) (Bankr. S.D. Tex. July 21, 2016); *In re Linn Energy, LLC*, Case No. 16-60040 (DRJ) (Bankr. S.D. Tex. July 1, 2016); *In re Breitburn Energy Partners LP*, Case No. 16-11390 (SMB) (Bankr. S.D.N.Y. June 15, 2016); *In re Penn Virginia Corp.*, Case No. 16-32395 (KLP) (Bankr. E.D. Va. June 9, 2016); *In re Midstates Petroleum Co., Inc.*, Case No. 16- 32237 (DRJ) (Bankr. S.D. Tex. May 4, 2016); *In re*

Swift Energy Co., Case No. 15-12670 (MFW) (Bankr. D. Del. Feb. 1, 2016); *In re Magnum Hunter Res. Corp.*, Case No. 15-12533 (KG) (Bankr. D. Del. Jan. 11, 2016).

37. Finally, the Debtors submit that payment of the Lienholder Claims is necessary and appropriate and is authorized under section 105(a) of the Bankruptcy Code pursuant to the “necessity of payment” doctrine, which “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

38. Under section 105(a) of the Bankruptcy Code, the Court has expansive equitable powers to fashion any order or decree that is in the interest of preserving or protecting the value of the Debtors’ assets. *See In re Combustion Eng’g, Inc.*, 391 F.3d 190, 236 (3d Cir. 2004) (citation omitted) (noting that section 105 of the Bankruptcy Code “has been construed to give a bankruptcy court ‘broad authority’ to provide equitable relief appropriate to assure the orderly conduct of reorganization proceedings”); *In re Nixon*, 404 F. App’x 575, 578 (3d Cir. 2010) (citation omitted) (“It is well settled that the court’s power under § 105(a) is broad.”); *In re Nortel Networks, Inc.*, 532 B.R. 494, 554 (Bankr. D. Del. 2015) (citations omitted) (“The Third Circuit has construed [section 105 of the Bankruptcy Code] to give bankruptcy courts ‘broad authority’ to provide appropriate equitable relief to assure the orderly conduct of reorganization proceedings, and to ‘craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.’”); *see also In re Chinichian*, 784 F.2d 1440, 1443 (9th Cir. 1986) (citation omitted) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”).

39. The Court’s power to utilize the “doctrine of necessity” in the Chapter 11 Cases derives from the Court’s inherent equity powers and its statutory authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity more than a century ago, in *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309. The modern application of the doctrine of necessity is largely unchanged from the Supreme Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the continued operation of the [debtor] in serious jeopardy.”); *Friedman’s Inc. v. Roth Staffing Cos., L.P.* (*In re Friedman’s Inc.*), Case No. 09-10161 (CSS), 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) (citing *In re Enron Corp.*, 2003 WL 1562202, at *20 (Bankr. S.D.N.Y. Mar. 21, 2003)) (“The ‘doctrine of necessity’ stands for the proposition that a bankruptcy court may allow payment outside of a plan of reorganization on account of a pre-petition obligation where such payment is critical to the reorganization process.”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999).

40. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. at 826 (stating that where the debtor “cannot survive”

absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) (noting that courts grant debtors the authority to pay certain prepetition claims “where the payment is necessary to permit the effectuation of the rehabilitative purposes of the Bankruptcy Code”).

41. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. *See In re Ionosphere Clubs, Inc.*, 98 B.R. at 175 (holding that the “ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”); *In re Just For Feet, Inc.*, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); *see also Official Comm. of Unsecured Creditors of Motor Coach Indus. Int’l v. Motor Coach Indus. Int’l (In re Motor Coach Indus. Int’l)*, Case No. 09-078-SLR, 2009 WL 330993, at *2 n.5 (D. Del. Feb. 10, 2009); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994). The doctrine is frequently invoked early in a reorganization, particularly in connection with those chapter 11 sections that relate to payment of prepetition claims. The court in *In re StructureLite Plastics Corp.* indicated its accord with “the principle that a bankruptcy court may exercise its equity powers under section 105(a) to authorize payment of prepetition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” *In re StructureLite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988). The court stated that a “*per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *Id.* at 932. Accordingly, pursuant to

section 105(a) of the Bankruptcy Code, the Court is empowered to grant the relief requested herein.

42. Based upon the foregoing, the Debtors submit that the relief requested herein is essential, appropriate, and in the best interests of the Debtors' estates and stakeholders. Absent this relief, the value of the Debtors' estates will suffer, possibly precipitously. Consequently, the Debtors' stakeholders will benefit if the requested relief is granted.

**Applicable Financial Institutions Should Be
Authorized To Honor and Process Related Checks and Transfers**

43. The Debtors also request that all applicable financial institutions be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to, the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before, on, or after the Petition Date and (b) rely on the Debtors' designation of any particular check as approved by the Proposed Orders.

Necessity of Immediate Relief

44. Bankruptcy Rule 6003 provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" Fed. R. Bankr. P. 6003. The Debtors believe that the Gas Vendors and Lien Claimants provide critical goods to the Debtors, the uninterrupted flow of which is crucial for the success of their business operations. If the Debtors are not permitted to continue their ordinary business operations by continuing to pay the Lienholder Claims as they

come due, the Debtors could suffer immediate and irreparable harm. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

Debtors' Reservation of Rights

45. Nothing contained herein is intended or should be construed as, or deemed to constitute, an agreement or admission as to the validity of any claim against the Debtors on any grounds, a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, or an assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claims related to the Lienholder Claims under applicable bankruptcy and non-bankruptcy law. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended, and should not be construed, as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Waiver of Stay Under Bankruptcy Rule 6004(h)

46. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

Notice

47. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware, (b) each of the Debtors' 20 largest unsecured creditors on a consolidated basis, (c) Vinson & Elkins LLP, as counsel to Wells Fargo Bank, N.A., the administrative agent under Southcross's prepetition secured revolving credit facility, (d) (x) Arnold & Porter Kaye Scholer LLP and (y) Young Conaway Stargatt & Taylor, LLP, as counsel to Wilmington Trust, N.A., the administrative agent under Southcross's prepetition secured term loan facility and post-petition credit facility, (e) Willkie Farr & Gallagher LLP, as counsel to the post-petition lenders and an ad hoc group of prepetition lenders, (f) Debevoise & Plimpton LLP, as counsel to Southcross Holdings LP, (g) the Securities and Exchange Commission, (h) the Internal Revenue Service, and (i) the United States Attorney's Office for the District of Delaware (collectively, the "**Notice Parties**").

48. Notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). A copy of this Motion and any order approving it will also be made available on the Debtors' case information website located at <http://www.kccllc.net/southcrossenergy>. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required.

No Prior Request

49. The Debtors have not previously sought the relief requested herein from the Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Orders substantially in the forms attached hereto as Exhibit B and Exhibit C, respectively,

granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: April 1, 2019
Wilmington, Delaware

Respectfully submitted,
MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Robert J. Dehney

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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Vendor Agreement

Southcross Energy Partners, L.P.

_____, 2019

TO: [Gas Vendor or Lien Claimant]
[Name]
[Address]

Dear Valued Supplier:

As you are aware, Southcross Energy Partners, L.P., its general partner, and certain of its subsidiaries (collectively, the “**Company**”) commenced chapter 11 cases (collectively, the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on April 1, 2019 (the “**Petition Date**”). On the Petition Date, the Company requested the Bankruptcy Court’s authority to pay the prepetition claims of certain suppliers in part in recognition of the importance of the Company’s relationship with such suppliers and its desire that the Chapter 11 Cases have as little effect on the Company’s ongoing business operations as possible. On [●], the Bankruptcy Court entered an interim order (the “**Order**”) authorizing the Company, under certain conditions, to pay the prepetition claims of certain suppliers that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to receive payment on account of prepetition claims, you must sign this agreement (“**Vendor Agreement**”) and agree to continue to supply goods and services to the Company based on “**Customary Trade Terms**.” In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable to the Company and in effect between you and the Company in the one-year period prior to the Petition Date, or such other trade terms as you and the Company agree upon.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, you and the Company both agree that:

1. The agreed-upon balance of your prepetition claim (net of any setoffs, credits, or discounts) that you will receive from the Company is \$_____ (the “**Claim**”).
2. The Company agrees to provisionally pay you _____% of your Claim, or \$_____, upon execution of this Vendor Agreement.
3. You hereby agree to waive any remaining claim against the Company.

4. You agree to supply post-petition goods to the Company in accordance with the Customary Trade Terms, which include (if more space is required, attach continuation pages): _____

5. During the pendency of the Chapter 11 Cases, you will continue to extend to the Company all Customary Trade Terms (as described above).

6. You will not demand a lump sum payment upon consummation of a chapter 11 plan in the Chapter 11 Cases on account of any administrative expense priority claim that you assert, but instead agree that such claims will be paid in the ordinary course of business after consummation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Company.

7. You will not separately seek payment for reclamation and similar claims outside of the terms of the Order.

8. You will not file or otherwise assert against the Company, the estates, or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statute or other legal authority upon which such lien is asserted) or interest related in any way to any remaining prepetition amounts allegedly owed to you by the Company arising from agreements entered into prior to the Petition Date. Furthermore, you agree to take (at your own expense) all necessary steps to remove any such lien or interest as soon as possible.

9. If either the Gas Vendors and Lien Claimants payment program authorized by the Order or your participation therein terminates as provided in the Order, or you later refuse to continue to supply goods to the Company on Customary Trade Terms during the pendency of the Chapter 11 Cases, the Company may (a) declare any payments you receive on account of your Claim (including claims arising under section 503(b)(9) of the Bankruptcy Code) to be voidable post-petition transfers pursuant to section 549(a) of the Bankruptcy Code that the Company may recover from you in cash and (b) demand that you immediately return such payments to the extent that the aggregate amount of such payments exceeds the post-petition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever. Upon recovery of such payment by the Company, your Claim shall be reinstated in such an amount as to restore the Company and you to your original positions, as if the agreement had never been entered into and the payment of your Claim had not been made.

10. The undersigned, a duly authorized representative of Gas Vendor or Lien Claimant], has reviewed the terms and provisions of the Order and agrees that Gas Vendor or Lien Claimant is bound by such terms.

11. Any dispute with respect to this letter agreement, the Order, and/or your participation in the Gas Vendors or Lien Claimants Payment Program shall be determined by the Bankruptcy Court.

If you have any questions about this letter agreement or our financial restructuring, please do not hesitate to call.

Sincerely,

Southcross Energy Partners, L.P.

By: _____
[Name]
[Title]

Agreed and Accepted by:
[Gas Vendor or Lien Claimant]

By: _____
Its: _____

Dated: _____, 2019

Exhibit B

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-[_____ (____)]
<i>et al.</i> ,)	
)	Jointly Administered
Debtors. ¹)	
)	

**INTERIM ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF GAS VENDORS AND OTHER LIEN
CLAIMANTS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession in the Chapter 11 Cases (collectively, the “**Debtors**”), for entry of interim and final orders pursuant to sections 105(a) and 363 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, all or a portion of the Lienholder Claims and (b) authorizing the Debtors’ financial institutions to receive, process, honor, and pay checks or wire transfers used by the

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Debtors to pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having held a hearing on the Motion (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby granted on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay all or some of the Lienholder Claims as the Debtors determine, in their sole discretion, to be necessary or appropriate, in an interim amount not to exceed \$23,000,000.
3. The Debtors, in their sole discretion, may condition payment to the Gas Vendors and Lien Claimants upon agreement by the applicable Gas Vendors or Lien Claimant to continue

to supply goods or services to the Debtors on such creditor's Customary Trade Terms³ for a period following the date of the agreement or on other such terms and conditions as are acceptable to the Debtors.

4. As a further condition of receiving payment of a Lienholder Claim, the Debtors are authorized, in their sole discretion, to require that the applicable Gas Vendors or Lien Claimant agree to take whatever action is necessary to remove any existing Liens or Interests at such Gas Vendor's or Lien Claimant's sole cost and expense and waive any right to assert a Lien or Interest on account of the paid claim of such Gas Vendors or Lien Claimant.

5. The Debtors may, in their sole discretion, undertake to cause Gas Vendors and Lien Claimants to enter into an agreement, including provisions substantially in the form attached to the Motion as Exhibit A (the "**Vendor Agreement**"), as a condition to paying a Lienholder Claim.

6. The Debtors are authorized, but not directed, to enter into Vendor Agreements when the Debtors determine, in their sole discretion, that it is appropriate to do so in connection with making payments to Gas Vendors and Lien Claimants; *provided, however*, that the Debtors' inability to enter into a Vendor Agreement shall not preclude them from paying a Lienholder Claim when, in their sole discretion, such payment is necessary to the Debtors' operations.

7. If the Debtors determine that, in their sole discretion, a Gas Vendors or Lien Claimant has not complied with the terms and provisions of a Vendor Agreement or has failed to continue to provide Customary Trade Terms following the date of the Vendor Agreement, or on

³ As used herein, "**Customary Trade Terms**" means, with respect to a Gas Vendor or Lien Claimant, (a) the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs), that were most favorable to the Debtors and in effect between such creditor and the Debtors prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such creditor.

such terms as were individually agreed to between the Debtors and such creditor, the Debtors may terminate such a Vendor Agreement, together with the other benefits to the creditor as contained in this Order; *provided, however*, that the Vendor Agreement may be reinstated if (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the creditor, (b) the underlying default under the Vendor Agreement is fully cured by the creditor not later than five business days after the date the initial default occurred, or (c) the Debtors, in their sole discretion, reach a subsequent agreement with the creditor.

8. If a Vendor Agreement is terminated as set forth above, or if a Gas Vendor or Lien Claimant that has received payment of a Lienholder Claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then the Debtors may, in their sole discretion, and without further order of the Court (a) declare that the payment of such Lienholder Claim is a voidable post-petition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Gas Vendor or Lien Claimants in cash, (b) demand that the creditor immediately return such payments in respect of its Lienholder Claim to the extent that the aggregate amount of such payments exceeds the post-petition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery of such payment by the Debtors, such creditor's Lienholder Claim shall be reinstated in such an amount as to restore the Debtors and the applicable Gas Vendor or Lien Claimant to their original positions, as if the agreement had never been entered into and the payment of the creditor's Lienholder Claim had not been made.

9. All Vendor Agreements shall be deemed to have terminated, together with the other benefits to Gas Vendors or Lien Claimants as contained in this Order, upon entry of an order converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

10. Payments of Lienholder Claims may include a communication of the following statement:

By accepting this payment, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the District of Delaware, dated _____, 2019 in the chapter 11 cases of Southcross Energy Partners, L.P., *et al.* (Case No. 19-__), entitled "Interim Order Authorizing (i) Debtors To Pay Certain Prepetition Claims of Gas Vendors and Other Lien Claimants and (ii) Financial Institutions To Honor and Process Related Checks and Transfers" and submits to the jurisdiction of that Court for enforcement thereof.

11. A final hearing to consider the relief requested in the Motion shall be held on _____, 2019 at _____ (Prevailing Eastern Time) and any objections or responses to the Motion shall be filed and served on the Notice Parties so as to be actually received on or prior to _____, 2019 at 4:00 p.m. (Prevailing Eastern Time).

12. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

13. The Debtors are authorized, but not required to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Lienholder Claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse

the Lien Claimants or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

14. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

15. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

16. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

17. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any order of this Court approving the debtor-in-possession financing facility and use of cash collateral (the "**DIP Order**"), including, without limitation, any budget in connection therewith, the terms of the DIP Order shall govern.

18. The requirements of Bankruptcy Rule 6003 are satisfied by the contents of the Motion.

19. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

20. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

21. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE [•]
UNITED STATES BANKRUPTCY JUDGE

Exhibit C

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
SOUTHCROSS ENERGY PARTNERS, L.P.,)	Case No. 19-[_____] (____)]
<i>et al.</i> ,)	
)	Jointly Administered
Debtors. ¹)	
)	

**FINAL ORDER AUTHORIZING (I) DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF GAS VENDORS AND OTHER LIEN
CLAIMANTS AND (II) FINANCIAL INSTITUTIONS TO HONOR AND
PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of Southcross Energy Partners, L.P. (“**Southcross**”), Southcross Energy Partners GP, LLC, and Southcross’s wholly owned direct and indirect subsidiaries, each of which is a debtor and debtor in possession in the Chapter 11 Cases (collectively, the “**Debtors**”), for entry of interim and final orders pursuant to sections 105(a) and 363 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, all or a portion of the Lienholder Claims and (b) authorizing the Debtors’ financial institutions to receive, process, honor, and pay checks or wire transfers used by the

¹ The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective Employer Identification Numbers, are as follows: Southcross Energy Partners, L.P. (5230); Southcross Energy Partners GP, LLC (5141); Southcross Energy Finance Corp. (2225); Southcross Energy Operating, LLC (9605); Southcross Energy GP LLC (4246); Southcross Energy LP LLC (4304); Southcross Gathering Ltd. (7233); Southcross CCNG Gathering Ltd. (9553); Southcross CCNG Transmission Ltd. (4531); Southcross Marketing Company Ltd. (3313); Southcross NGL Pipeline Ltd. (3214); Southcross Midstream Services, L.P. (5932); Southcross Mississippi Industrial Gas Sales, L.P. (7519); Southcross Mississippi Pipeline, L.P. (7499); Southcross Gulf Coast Transmission Ltd. (0546); Southcross Mississippi Gathering, L.P. (2994); Southcross Delta Pipeline LLC (6804); Southcross Alabama Pipeline LLC (7180); Southcross Nueces Pipelines LLC (7034); Southcross Processing LLC (0672); FL Rich Gas Services GP, LLC (5172); FL Rich Gas Services, LP (0219); FL Rich Gas Utility GP, LLC (3280); FL Rich Gas Utility, LP (3644); Southcross Transmission, LP (6432); T2 EF Cogeneration Holdings LLC (0613); and T2 EF Cogeneration LLC (4976). The debtors' mailing address is 1717 Main Street, Suite 5300, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Debtors to pay the foregoing, as more fully described in the Motion; and the Court having jurisdiction to consider the matters raised in the Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having authority to hear the matters raised in the Motion pursuant to 28 U.S.C. § 157; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the requested relief being a core proceeding that the Court can determine pursuant to 28 U.S.C. § 157(b)(2); and due and proper notice of the Motion and opportunity for a hearing on the Motion having been given to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Howe Declaration; and the Court having held an interim hearing on the Motion; and the Court having granted interim relief on the Motion on [•], 2019 (D.I. [•]); and the Court having held a final hearing on the Motion (the “**Final Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Final Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion being in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is hereby granted as set forth herein.
2. The Debtors are authorized, but not directed, to pay all or some of the Lienholder Claims as the Debtors determine, in their sole discretion, to be necessary or appropriate, in an amount not to exceed \$23,000,000.

3. The Debtors, in their sole discretion, may condition payment to the Gas Vendors and Lien Claimants upon agreement by the applicable Gas Vendor or Lien Claimant to continue to supply goods or services to the Debtors on such creditor's Customary Trade Terms³ for a period following the date of the agreement or on other such terms and conditions as are acceptable to the Debtors.

4. As a further condition of receiving payment of a Lienholder Claim, the Debtors are authorized, in their sole discretion, to require that the applicable Gas Vendor or Lien Claimant agree to take whatever action is necessary to remove any existing Liens or Interests at such Gas Vendor's or Lien Claimant's sole cost and expense and waive any right to assert a Lien or Interest on account of the paid claim of such Gas Vendor or Lien Claimant.

5. The Debtors may, in their sole discretion, undertake to cause Gas Vendors and Lien Claimants to enter into an agreement, including provisions substantially in the form attached to the Motion as Exhibit A (the "**Vendor Agreement**"), as a condition to paying a Lienholder Claim.

6. The Debtors are authorized, but not directed, to enter into Vendor Agreements when the Debtors determine, in their sole discretion, that it is appropriate to do so in connection with making payments to Gas Vendors and Lien Claimants; *provided, however*, that the Debtors' inability to enter into a Vendor Agreement shall not preclude them from paying a Lienholder Claim when, in their sole discretion, such payment is necessary to the Debtors' operations.

³ As used herein, "**Customary Trade Terms**" means, with respect to a Gas Vendor or Lien Claimant, (a) the normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs), that were most favorable to the Debtors and in effect between such creditor and the Debtors prior to the Petition Date or (b) such other trade terms as agreed by the Debtors and such creditor.

7. If the Debtors determine that, in their sole discretion, a Gas Vendor or Lien Claimant has not complied with the terms and provisions of a Vendor Agreement or has failed to continue to provide Customary Trade Terms following the date of the Vendor Agreement, or on such terms as were individually agreed to between the Debtors and such creditor, the Debtors may terminate such a Vendor Agreement, together with the other benefits to the creditor as contained in this Order; *provided, however*, that the Vendor Agreement may be reinstated if (a) such determination is subsequently reversed by the Court for good cause after it is shown that the determination was materially incorrect after notice and a hearing following a motion from the creditor, (b) the underlying default under the Vendor Agreement is fully cured by the creditor not later than five business days after the date the initial default occurred, or (c) the Debtors, in their sole discretion, reach a subsequent agreement with the creditor.

8. If a Vendor Agreement is terminated as set forth above, or if a Gas Vendor or Lien Claimant that has received payment of a Lienholder Claim later refuses to continue to supply goods or services for the applicable period in compliance with the Vendor Agreement or this Order, then the Debtors may, in their sole discretion, and without further order of the Court (a) declare that the payment of such Lienholder Claim is a voidable post-petition transfer pursuant to section 549(a) of the Bankruptcy Code that the Debtors may recover from such Gas Vendor or Lien Claimants in cash, (b) demand that the creditor immediately return such payments in respect of its Lienholder Claim to the extent that the aggregate amount of such payments exceeds the post-petition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever, and (c) upon recovery of such payment by the Debtors, such creditor's Lienholder Claim shall be reinstated in such an amount as to restore the Debtors and the applicable Gas Vendor or Lien Claimant to

their original positions, as if the agreement had never been entered into and the payment of the creditor's Lienholder Claim had not been made.

9. All Vendor Agreements shall be deemed to have terminated, together with the other benefits to Gas Vendors or Lien Claimants as contained in this Order, upon entry of an order converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code.

10. Payments of Lienholder Claims may include a communication of the following statement:

By accepting this payment, the payee agrees to the terms of the Order of the United States Bankruptcy Court for the District of Delaware, dated _____, 2019 in the chapter 11 cases of Southcross Energy Partners, L.P., *et al.* (Case No. 19-___), entitled "Final Order Authorizing (i) Debtors To Pay Certain Prepetition Claims of Gas Vendors and Other Lien Claimants and (ii) Financial Institutions To Honor and Process Related Checks and Transfers" and submits to the jurisdiction of that Court for enforcement thereof.

11. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks, drafts, wires, check transfer requests, or automated clearing house transfers evidencing amounts paid by the Debtors under this Order whether presented prior to, on, or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

12. The Debtors are authorized, but not required, to issue, in their sole discretion, new post-petition checks, or effect new fund transfers, for the Lienholder Claims to replace any prepetition checks or fund transfer requests that may be dishonored or rejected and to reimburse the Lien Claimants or the applicable payee, as the case may be, for any fees or costs incurred by them in connection with a dishonored or voided check or funds transfer.

13. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and all of the Debtors' rights with respect to such matters are expressly reserved.

14. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall (a) create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person or entity or (b) be deemed to convert the priority of any claim from a prepetition claim into an administrative expense claim.

15. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as or deemed to constitute (a) an agreement or admission by the Debtors as to the validity of any claim against the Debtors on any ground, (b) a grant of third party beneficiary status or bestowal of any additional rights on any third party, (c) a waiver or impairment of any rights, claims, or defenses of the Debtors' rights to dispute any claim on any grounds, (d) a promise by the Debtors to pay any claim, or (e) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

16. Notwithstanding anything to the contrary in this Order, in the event of any inconsistency between the terms of this Order and the terms of any order of this Court approving the debtor-in-possession financing facility and use of cash collateral (the "**DIP Order**"), including, without limitation, any budget in connection therewith, the terms of the DIP Order shall govern.

17. Any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

18. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

19. Proper, timely, adequate, and sufficient notice of the Motion has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion or the entry of this Order shall be required.

20. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE [•]
UNITED STATES BANKRUPTCY JUDGE